

Appendix VI**DRAFT CDDH Report on compulsory legal representation**

1. In its opinion of 4 April 2011 given with a view to the Izmir Conference, the Court considered *“that compulsory representation by a lawyer could be an effective and appropriate means of ensuring proper legal advice before filing an application and would increase the quality in respect of drafting applications. It would be consistent with the principle of subsidiarity in so far as it links directly into the national legal system. Any introduction of compulsory representation should be subject to the setting-up of appropriate legal aid facilities for applicants at national level.”*

2. It should immediately be noted that the Court itself, on further reflection, has since concluded that this proposal would be problematic.¹ The CDDH, following its own examination of the issue, has come to the same conclusion.

3. The following arguments had been suggested in favour of making legal representation compulsory from the outset:

- (i) It would enhance the quality of applications brought before the Court, since prospective applicants would be advised professionally, notably on the admissibility conditions the envisaged application would face, which may perhaps reduce the number of applications.
- (ii) Applications would be drafted to a professional standard, which may allow their treatment by the Court’s Registry to be accelerated.
- (iii) It would maintain a direct link, through the person of the legal representative, with the preceding domestic proceedings that would be in keeping with the principle of subsidiarity.

4. Upon examination, however, the following arguments against have become apparent.

- (i) Such a measure, which would put the applicant to a financial cost, would make application to the Court less straightforward and therefore could present disadvantages similar to those for introduction of a fee. Without provision of legal aid for persons of insufficient means, the measure would impact on the right of individual application (see further below).
- (ii) It is not certain that lawyers succeed in dissuading their clients from making applications, even when they appear manifestly inadmissible. The Court’s statistics furthermore do not show that the applications made through legal representatives result in fewer decisions of clear inadmissibility than those presented by an individual alone.²
- (iii) Legal representation is already required of applicants whose cases are communicated to the respondent State, other than in simple cases. Imposing it also for these would add to the State’s costs under Article 41.

¹ See doc. DH-GDR(2011)026, “Note on compulsory legal representation of applicants,” European Court of Human Rights (doc. 3709276), 21 October 2011.

² Ibid.

5. As regards the Court's suggestion that legal aid would be necessary for those of insufficient means, the following disadvantages have been mentioned.

- (i) Should the States finance and manage the provision of legal aid, this would have substantial budgetary implications for those member states that do not currently provide legal aid to pay for legal representation of those making applications to the Court.
- (ii) Such legal aid could not be granted by the States without an assessment of the well-foundedness of the application. As soon as legal aid had been refused on account of the application's lack of well-foundedness, the Court would risk being seized with new applications challenging the failure to grant legal aid by the State concerned on the basis of a violation of Art. 34 of the Convention.
- (iii) Alternatively, should the task of administering legal aid be conferred on the Court, this would in turn create a new administrative and legal burden, which would be clearly contrary to the intended objective of relieving the Court's overload.